

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE ONLINE DVD RENTAL ANTITRUST LITIGATION	Case No. M 09-2029 PJH Judge: Hon. Phyllis J. Hamilton
This document relates to: ALL ACTIONS	STIPULATION AND [PROPOSED] ORDER MODIFYING PROTECTIVE ORDER

WHEREAS, a Stipulation and Protective Order was entered by the Court on September 21, 2009 (Document No. 82)(“Protective Order”), which, among other things, placed limits on the disclosure of any information or item designated “HIGHLY CONFIDENTIAL” pursuant to the terms of the Protective Order;

WHEREAS, a Stipulation and Order Modifying the Protective Order was entered by the Court on February 25, 2010 (Document No. 115)(“Modified Protective Order”), which placed additional limits on the disclosure of any information or item designated “HIGHLY CONFIDENTIAL” produced by Blockbuster Inc. (“Blockbuster”) pursuant to the terms of the Protective Order;

WHEREAS, the parties have issued subpoenas to several non-parties to this case requesting the production of documents, including documents expected to be designated as “HIGHLY CONFIDENTIAL” pursuant to the terms of the Protective Order;

1 WHEREAS, paragraph 8.4 of the original Stipulation and Protective Order (Document No. 82)
2 may have been inadvertently deleted from the Modified Protective Order; and

3 WHEREAS, after consultation and negotiation, the parties agree that good cause exists to
4 further modify the Protective Order to facilitate the production of such information in this case;

5 THEREFORE, it is hereby stipulated between and among the parties hereto, by and through
6 their respective counsel of record, that the Protective Order shall be modified at subparagraphs 2.5, 8.2,
7 8.3 and 8.4 which shall read as follows:

8 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
9 produced by a Producing Party.

10 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
11 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose
12 any information or item designated CONFIDENTIAL only to:

- 13 (a) counsel for all parties in the litigation;
- 14 (b) experts and/or consultants (as defined in this Order) to whom disclosure is
15 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
16 Protective Order" (Exhibit A);
- 17 (c) the Court and its personnel;
- 18 (d) court reporters, their staffs, and professional vendors to whom disclosure is
19 reasonably necessary for this litigation;
- 20 (e) the author, addressees, or recipient of the document, or any other person who
21 would have had access to such information by virtue of his/her employment;
- 22 (f) any witness testifying at a deposition or in advance of a deposition, or whom
23 any party in good faith believes may be a witness in this case, who has been provided with a
24 copy of this Order and who has been instructed that this Order forbids the witness from
25 disclosing Confidential Information except as this Order permits; and
- 26 (g) any other person to whom the Designating Party agrees in writing or on the
27 record, and any other person to whom the Court compels access to the Confidential
28 Information.

Exhibit A will be retained by counsel for the Party which obtains the appropriate signature.

8.3 Disclosure of "HIGHLY CONFIDENTIAL". Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL" only to:

(a) Outside Counsel of record in this action, as well as employees of said counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) In-House Counsel of a party to the litigation to whom disclosure is reasonably necessary for this litigation;

(c) experts and/or consultants (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation;

(f) current employees of the producing party;

(g) any author, addressees or recipients, or any other person who has accessed the document in the course of his or her employment; and

(h) any other person to whom the Designating Party agrees in writing or on the record, or any other person to whom the Court compels access to the Highly Confidential Information.

8.4 Additional Limits on Disclosure of "HIGHLY CONFIDENTIAL" Information Produced by Blockbuster Inc. Unless otherwise ordered by the Court or permitted in writing by Blockbuster Inc., a party to the litigation may disclose any information or item produced by non-party Blockbuster Inc. and designated by it as "HIGHLY CONFIDENTIAL" only to:

(a) the Outside Counsel of record to any party to the litigation, as well as employees of said counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) In-House Counsel of any party to the litigation to whom disclosure is reasonably necessary for this litigation, provided however, that such In-House Counsel does not participate in or have responsibility for competitive strategy or decisions of the party;

(c) experts and/or consultants (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation;

(f) current employees of Blockbuster Inc.;

(g) any author, addressees or recipients, or any other person who has accessed the document in the course of his or her employment; and

(h) any other person to whom Blockbuster Inc. agrees in writing or on the record, or any other person to whom the Court compels access to the Blockbuster Inc.'s HIGHLY CONFIDENTIAL Information.

THEREFORE, it is also hereby stipulated between and among the parties hereto, by and through their respective counsel of record, that the Protective Order shall be further modified by adding subparagraph 8.5 which shall read as follows:

8.5 Disclosure or production of discovery by a non-party to a Receiving Party shall be produced to all parties in this litigation, subject to subparagraphs 8.2, 8.3 and 8.4 as modified above.

THEREFORE, it is also hereby stipulated between and among the parties hereto, by and through their respective counsel of record, that the Protective Order shall be further modified by adding subparagraph 8.6 which shall read as follows:

8.6 Nothing in this Order affects the rights of the Producing Party or the Designating Party to use or disclose its own Protected Material in any way, including but not limited to providing Discovery or Disclosure Material to litigants for use in other lawsuits. Such disclosure shall not waive the protections of this Order, and shall not entitle other parties, non-parties, or their attorneys to use or disclose the Protected Material in violation of this Protective Order.

1 DATED: June 10, 2010

2
3 Respectfully Submitted,

4 /s/ Robert G. Abrams

5 Robert G. Abrams
6 Thomas A. Isaacson
7 Peter A. Barile III
8 HOWREY LLP
9 1299 Pennsylvania Avenue, N.W.
10 Washington, DC 20004
11 Tel.: (202) 783-0800
12 Fax: (202) 383-6610

13 Paul Alexander
14 HOWREY LLP
15 1950 University Avenue
16 East Palo Alto, CA 94303
17 Tel.: (650) 798-3500
18 Fax: (650) 798-3600

19 Emily L. Maxwell
20 HOWREY LLP
21 525 Market Street, Suite 3600
22 San Francisco, CA 94105
23 Tel.: (415) 848-4947
24 Fax: (415) 848-4999

25 ***Lead Class Counsel for Plaintiffs and the Proposed Class***

26 *Who attest in accordance with General Order No. 45 X. B. that*
27 *concurrence in the filing of the document has been obtained from*
28 *each of the undersigned counsel:*

29 Guido Saveri
30 R. Alexander Saveri
31 Cadio Zirpoli
32 SAVERI & SAVERI, INC.
33 706 Sansome Street
34 San Francisco, CA 94111
35 Tel.: (415) 217-6810
36 Fax: (415) 217-6813

37 ***Liaison Class Counsel for Plaintiffs and the Proposed Class***

38 Joseph J. Tabacco, Jr.
39 Christopher T. Heffelfinger
40 Todd A. Seaver
41 BERMAN DE VALERIO
42 425 California Street, Suite 2100
43 San Francisco, CA 94104
44 Tel.: (415) 433-3200

HOWREY LLP

1 Fax: (415) 433-6382

2 Manuel J. Dominguez
3 Daniel A. Bushell
4 BERMAN DE VALERIO
5 4280 Professional Center Drive, Suite 350
6 Palm Beach Gardens, FL 33410
7 Tel: (561) 835-9400
8 Fax: (561) 835-0322

9 Eugene A. Spector
10 Jeffrey J. Corrigan
11 William G. Caldes
12 Theodore M. Lieverman
13 Jay S. Cohen
14 Jonathan M. Jagher
15 SPECTOR ROSEMAN KODROFF & WILLIS, P.C.
16 1818 Market Street, Suite 2500
17 Philadelphia, PA 19103
18 Tel.: (215) 496-0300
19 Fax: (215) 496-6611

20 H. Laddie Montague, Jr.
21 Merrill G. Davidoff
22 David F. Sorensen
23 Peter Kohn
24 BERGER & MONTAGUE, P.C.
25 1622 Locust Street
26 Philadelphia, PA 19103
27 Tel.: (215) 875-3010
28 Fax: (215) 875-4604

Members of the Steering Committee for Plaintiffs

18 /s/ Sara Ciarelli Walsh
19 Jonathan M. Jacobson
20 Sara Ciarelli Walsh
21 WILSON SONSINI GOODRICH & ROSATI, PC
22 1301 Avenue of the Americas
23 40th Floor
24 New York, NY 10019
25 Tel.: (212) 999-5800
26 Fax: (212) 999-5899

25 Keith E. Eggleton
26 WILSON SONSINI GOODRICH & ROSATI
27 650 Page Mill Road
28 Palo Alto, Ca 94304-1050
Tel: (650) 493-9300
Fax: (650) 565-5100

1 Scott Andrew Sher
2 WILSON SONSINI GOODRICH & ROSATI
3 1700 K Street, NW, Fifth Floor
4 Washington, DC 20006
5 Tel: (202) 973-8800
6 Fax: (202) 973-8899

7 ***Counsel for Defendant Netflix, Inc.***

8 /s/ Genevieve Vose

9 Neal Manne
10 Richard Wolf Hess
11 SUSMAN GODFREY L.L.P.
12 1000 Louisiana Street, Suite 5100
13 Houston, Texas 77002
14 Tel: (713) 651-9366
15 Fax: (713) 654-6666

16 Genevieve Vose
17 SUSMAN GODFREY L.L.P.
18 1201 Third Ave., Suite 3800
19 Seattle, WA 98101-3000
20 Tel: (206) 516-3836
21 Fax: (206) 516-3883

22 Stephen E. Morrissey
23 Kathryn Parsons Hoek
24 Marc M. Seltzer
25 SUSMAN GODFREY L.L.P.
26 1901 Avenue of the Stars, Suite 950
27 Los Angeles, CA 90067-6029
28 Tel.: 310-789-3100
Fax: 310-789-3150

***Counsel for Defendant Wal-Mart Stores, Inc. and Walmart.com
USA LLC***

ORDER

The Stipulation of the parties for an Order modifying the Protective Order having been considered by the Court and good cause appearing,

IT IS HEREBY ORDERED that the Protective Order shall be modified at subparagraphs 2.5, 8.2, 8.3, and 8.4, which shall read as follows:

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material produced by a Producing Party.

8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

- (a) counsel for all parties in the litigation;
- (b) experts and/or consultants (as defined in this Order) to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);
- (c) the Court and its personnel;
- (d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation;
- (e) the author, addressees, or recipient of the document, or any other person who would have had access to such information by virtue of his/her employment;
- (f) any witness testifying at a deposition or in advance of a deposition, or whom any party in good faith believes may be a witness in this case, who has been provided with a copy of this Order and who has been instructed that this Order forbids the witness from disclosing Confidential Information except as this Order permits; and
- (g) any other person to whom the Designating Party agrees in writing or on the record, and any other person to whom the Court compels access to the Confidential Information.

Exhibit A will be retained by counsel for the Party which obtains the appropriate signature.

8.3 Disclosure of "HIGHLY CONFIDENTIAL". Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL" only to:

(a) Outside Counsel of record in this action, as well as employees of said counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) In-House Counsel of a party to the litigation to whom disclosure is reasonably necessary for this litigation;

(c) experts and/or consultants (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation;

(f) current employees of the producing party;

(g) any author, addressees or recipients, or any other person who has accessed the document in the course of his or her employment; and

(h) any other person to whom the Designating Party agrees in writing or on the record, or any other person to whom the Court compels access to the Highly Confidential Information.

8.4 Additional Limits on Disclosure of "HIGHLY CONFIDENTIAL" Information Produced by Blockbuster Inc. Unless otherwise ordered by the Court or permitted in writing by Blockbuster Inc., a party to the litigation may disclose any information or item produced by non-party Blockbuster Inc. and designated by it as "HIGHLY CONFIDENTIAL" only to:

(a) the Outside Counsel of record to any party to the litigation, as well as employees of said counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) In-House Counsel of any party to the litigation to whom disclosure is reasonably necessary for this litigation, provided however, that such In-House Counsel does not participate in or have responsibility for competitive strategy or decisions of the party;

(c) experts and/or consultants (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation;

(f) current employees of Blockbuster Inc.;

(g) any author, addressees or recipients, or any other person who has accessed the document in the course of his or her employment; and

(h) any other person to whom Blockbuster Inc. agrees in writing or on the record, or any other person to whom the Court compels access to the Blockbuster Inc.’s HIGHLY CONFIDENTIAL Information.

IT IS HEREBY ORDERED that the Protective Order shall be further modified by adding subparagraph 8.5 which shall read as follows:

8.5 Disclosure or production of discovery by a non-party to a Receiving Party shall be produced to all parties in this litigation, subject to subparagraphs 8.2, 8.3 and 8.4 as modified above.

IT IS HEREBY ORDERED that the Protective Order shall be further modified by adding subparagraph 8.6 which shall read as follows:

8.6 Nothing in this Order affects the rights of the Producing Party or the Designating Party to use or disclose its own Protected Material in any way, including but not limited to providing Discovery or Disclosure Material to litigants for use in other lawsuits. Such disclosure shall not waive the protections of this Order, and shall not entitle other parties, non-parties, or their attorneys to use or disclose the Protected Material in violation of this Protective Order.

1 Dated: 6/18/10

